INDIANA JUDICIAL CENTER

CASE CLIPS

Selected decisions of the Indiana appellate courts abstracted for judges by the Indiana Judicial Center.

VOL. XXVIII, NO. 25 **August 3, 2001**

CRIMINAL LAW ISSUES

BROWN v. STATE, No. 49S00-0004-CR-256, ___ N.E.2d ___ (Ind. July 19, 2001).
SULLIVAN, J.

As Defendant notes, we have expressly left open the question of whether a consultation with a parent is meaningful under Indiana Code § 31-32-5-1 if the parent is unaware of the child's rights prior to the consultation. See Cherrone v. State, 726 N.E.2d 251, 255 n.1 (Ind. 2000). [□□Footnote omitted.] We reiterate that "the usual, and in our view the better, practice … is to pr□□ovide the consultation after advising the juvenile and his or her parents of the rights to be waived." Id. (citations omitted). However, the record shows that after advising Defendant's father of Defendant's rights, the detective who took Defendant's statement offered Defendant's father a second opportunity to consult with his son. Having learned of the pertinent constitutional rights, Defendant's father apparently saw no gain to be had from further consultation. Under these circumstances, the lack of an advisement of rights prior to the consultation did not affect the quality of consultation that Defendant received and therefore he is not entitled to relief. [□□Footnote omitted.]

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SHEPARD, C. J., and BOEHM, DICKSON, and RUCKER, JJ., concurred.

RATLIFF v. STATE, No. 49A02-0010-CR-677, ___ N.E.2d ___ (Ind. Ct. App. July 23, 2001).
RILEY, J.

Ratliff argues that the warrantless search of his vehicle was a violation of the Fourth Amendment because the automobile exception to the warrant requirement was inapplicable. Essentially, Ratliff claims that because no exigent circumstances existed and his vehicle had been impounded and moved to a secure police facility, it was not

impracticable for the police to obtain a search warrant to search his vehicle and the suitcase located within his vehicle. The State counters that the warrantless search of Ratliff's vehicle was justified under the automobile exception to the warrant requirement because the police had probable cause to search his vehicle.

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[W]e fail to see the exigency of the circumstances in this particular case rendering it impracticable for the police to secure a search warrant to search Ratliff's vehicle. In fact, the police were knowledgeable of Ratliff's intention to deal drugs, and knew from informants one day in advance when and where Ratliff would be to complete the drug transaction. Moreover, once the police had transported Ratliff's vehicle to the police facility, an officer, without a warrant began searching Ratliff's vehicle. While searching the vehicle,

the officer discovered a suitcase and subsequently consulted a deputy prosecutor about whether to open the suitcase. Upon the deputy prosecutor's direction, the officer opened the suitcase without a warrant, revealing $30,100.02. Thus, the police had plenty of time to secure a warrant, as the vehicle had been impounded in a secure police facility. There was no risk that the police would lose crucial evidence as a result of the mobility of the vehicle.

Because there were no exigent circumstances and because it was practicable for the police to obtain a search warrant, the automobile exception to the warrant requirement is inapplicable, and therefore, it was unreasonable for the police to conduct a warrantless search of Ratliff's automobile. Before performing a search or seizure, police officers are required to obtain a warrant.

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SULLIVAN, J., concurred.
FRIEDLANDER, J., filed a separate written opinion in which he dissented.

STATE v. KEMP, No. 10A01-0101-CR-40, ___ N.E.2d ___ (Ind. Ct. App. July 24, 2001).
BAKER, J.

The State asserts that the trial court erred in dismissing the charges against him because convictions for sex crimes are proper in instances where police officers pose as child victims on the Internet. Kemp maintains, however, that dismissal was proper because the facts set forth in the charging informations with respect to counts I and II were insufficient so as to constitute a substantial step toward the offense of child molesting.

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In the instant case, the State alleged in its charging information that Kemp had committed a substantial step toward the offense of child molesting when he agreed to meet "Brittney4u2" at a restaurant parking lot, drove there, and brought some condoms with him. [Citation to Record omitted.] Under these circumstances, we observe that the facts alleged in the information do not reach the level of an overt act leading to the commission of child molesting. At most, such allegations only reach the level of preparing or planning to commit an offense. Were we to conclude otherwise, there would be no limit on the reach of "attempt" crimes. As a result, we conclude that the trial court properly granted Kemp's motion to dismiss the two child molesting counts.

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BAILEY and MATHIAS, JJ., concurred.

FRENCH v. STATE, No. 03A05-0009-CR-381, ___ N.E.2d ___ (Ind. Ct.. App. July 31, 2001).
SULLIVAN, J.

On June 26, 2000, before the scheduled trial on the felony battery and resisting law enforcement charges, French filed a motion for change of judge. In his motion, French claimed that after being transferred from the Michigan City prison to the Bartholomew

County Jail, he learned of disparaging remarks the trial judge allegedly had made against him during the March 29, 2000 sentence modification hearing of another defendant, Larry Montel Booker. However, because French was not aware of the exact nature of the comments, he requested a transcript of the hearing. Once French received and reviewed the transcript, he filed another motion with the court on July 20, 2000, asking the court to set the change of judge motion for hearing. In the motion, French asserted that he had "reviewed the transcript provided by the Court and believe[d] that it accurately and completely sets forth the factual basis for [French's] [m]otion." Record at 80.

During the July 25, 2000 hearing on the change of judge motion, French testified under oath concerning the trial judge's comments and counsel introduced into evidence the

transcript of Booker's sentence modification hearing. Particular reference was made to the following comments:

> "Well Mr. Booker, since you were sentenced back in February of ninety-eight, I've had the distinct displeasure of spending a lot of time with Roman Lamont French, and very little of that time has been very much fun. I really can't think of anybody who has been more disagreeable to deal with than him. *Had I been in your situation, I don't know that I would have shot the gun up in the air*. But I think at that time, I didn't know much about Mr. French. As I've said, I've learned a lot more about him since then. I'm going to go ahead and modify your sentence." Supplemental Record at 5-6, Defendant's Exhibit A (emphasis supplied).

Though French contended that the statement indicated bias on the part of the trial court, his motion was denied.

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In this case, the comments allegedly showing bias were the court's remarks concerning his disdain for the defendant and his empathy for Booker. The trial judge specifically stated that he could not "think of anybody who has been more disagreeable to deal with" and that had he been in Booker's situation, he did not know if he would have "shot the gun up in the air." Supp. R. at 5. The implication obviously being that the trial judge found French so provoking that he might have physically harmed him.

It is clear from the trial judge's comments that the judge became acquainted with French during the course of judicial proceedings. Normally, when a trial judge learns information about a defendant through the judicial process, bias and prejudice will not be found even if the judge makes remarks which are critical, disapproving, or even hostile. Sturgeon, 719 N.E.2d at 1182. For example, in Yager v. State, 437 N.E.2d 454, 462 (Ind. 1982) our Supreme Court concluded that a trial judge's comments that he was "mad" and "concerned" about a defendant's threats to make a citizen's arrest of the judge and other county officials and to bring them before a "people's court" did not demonstrate bias and prejudice on the part of the trial judge. The court explained:

> "We do not see the judge's comments as reflected in the [newspaper] article as showing prejudice to appellant. The judge stated he was 'mad' and 'concerned' about appellant's threats. However, we do not see these remarks as showing such prejudice against appellant as to deprive him of the right to be tried before an impartial judge. At best the remarks attributed to the judge reflect the frustrations he must have felt in dealing with an extremely uncooperative defendant who had made thinly veiled threats against the judge and other Vanderburgh County officials. The Court of Appeals has observed the showing of a strained relationship between a party's attorney and the judge is not reason for the judge to be disqualified. The same may be said with respect to the relationship between the judge and the criminal defendant." Id. at 462 (citation omitted).

However, if a remark shows a high degree of antagonism so as to make fair judgment

impossible, bias will be found. Sturgeon, 719 N.E.2d at 1182 (citing Liteky v. United States, 510 U.S. 540, 555 (1994)). Such was the case in Thakkar v. State, 644 N.E.2d 609 (Ind. Ct. App. 1994), where during a defendant's appeal but before sentencing, the trial judge publicly commented that the defendant had received a fair trial, that devastating evidence had been presented, and that it was common for lawyers to blame their clients' misfortunes upon trial judges. This court noted that although the remarks "did not specifically relate to the sentencing hearing to be held, to the possible sentences which might be imposed, or to the factors which would be considered in reaching that determination, the remarks stray[ed] far afield from the objectivity and impartiality which trial courts are obligated to display." Id. at 611. The Thakkar court further noted that the comments clearly called into question the judge's objectivity. Id.

Though we recognize the highly deferential standard with which we review the trial court's ruling, we must conclude that the trial judge's comments in this case strayed from the objectivity and impartiality which trial judges are obligated to display. The court simply went beyond expressing frustration to displaying a high degree of antagonism so as to make a fair judgment virtually impossible. . . .

In the final analysis, as noted in Thakkar v. State, supra:

> "The true question is whether 'an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge's impartiality.' Mahrdt v. State, 629 N.E.2d 244, 248 (Ind. Ct. App. 1994) (quoting Chief Justice Shepard's recusal statement in Tyson v. State, 622 N.E.2d 457 (Ind. 1993)). It should be noted that Chief Justice Shepard's recusal took place at the appellate stage, at which time there was no longer a presumption of innocence which attached to the defendant. In that respect, it is closer, by analogy, to a recusal for sentencing than for a recusal which is mandated at the guilt-determining stage." 644 N.E.2d at 612.

The trial judge abused his discretion by denying French's motion for change of judge.

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SHARPNACK, C. J., and MATHIAS, J., concurred.

TURNER v. STATE, No. 49A02-0012-CR-769, ___ N.E.2d ___ (Ind. Ct. App. July 31, 2001).
NAJAM, J.

As for Turner's final argument, we conclude that the trial court abused its discretion when it imposed a $1,000 public defender reimbursement fee. Indiana Code Section 35-33-7-6(c) states:

> If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:
>
> (1) For a felony action, a fee of one hundred dollars ($100).
> [Footnote omitted.]

Trial courts may deduct additional money to cover public defender costs from a defendant's posted cash bond pursuant to Indiana Code Section 35-33-8-3.2. See Obregon v. State, 703 N.E.2d 695, 696 (Ind. Ct. App. 1998). Such is not the case here, however, as Turner posted no bond and was incarcerated following his arrest through the conclusion of his trial. Thus, the trial court exceeded its statutory authority when it assessed Turner a reimbursement fee of more than $100. See Ind.Code § 35-33-7-6(c).

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BARNES and DARDEN, JJ., concurred.

CIVIL LAW ISSUES

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GALLANT INS. CO. v. ISAAC, No. 49S02-0011-CV-718, ___ N.E.2d ___ (Ind. July 23, 2001).
SULLIVAN, J.

The Court of Appeals . . . held that Thompson-Harris had "inherent authority" to bind Gallant, relying on our decision in Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1211 (Ind. 2000), reh'g denied. While we agree with the result reached by the trial court and Court of Appeals, we do so for reasons different than those given by the Court of Appeals. We granted transfer to explain why the concept of "apparent authority," rather than the concept of "inherent authority" discussed in Menard, is applicable in this case. [Citation omitted.]

. . . [W]e said that apparent authority refers to a third party's reasonable belief that the principal has authorized the acts of its agent; it arises from the principal's indirect or direct manifestations to a third party and not from the representations or acts of the agent. [Citations omitted.]

In Menard, we also discussed a third form of agency relationship – "inherent authority" – which is grounded in neither the principal's conduct toward the agent nor the principal's representation to a third party, but rather in the very status of the agent. [Citation omitted.] The concept of inherent authority "originates from the customary authority of a person in the particular type of agency relationship." [Citations omitted.]

Because the agent at issue in Menard was the president of the company, we found the concept of inherent authority – rather than actual or apparent authority – controlled our analysis. . . .

Thompson-Harris, the insurance agency with which Isaac dealt in this case, was, in our view, the "prototypical 'general' or 'special' agent, with respect to whom actual or apparent authority might be at issue." [Citation omitted.] It was not an agent with inherent authority, i.e., a person with a particular status like president. [Citations omitted.] . . .

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SHEPARD, C. J., and BOEHM, DICKSON, and RUCKER, JJ., concurred.

BLACK v. ACandS, Inc., No. 45A04-9[illegible]CV-565, ___ N.E.2d ___ (Ind. Ct. App. July 23, 2001).

MATTINGLY-MAY, J.

Indiana Code § 34-20-3-2 excepts certain asbestos-related actions from section one's ten-year statute of repose. This section defines accrual as the date when the injured p[illegible]n knows that he or she has an asbestos-related disease or injury. Specifically, § 34-20-3-2 provides that a product liability action based on personal injury, disability, disease, or death resulting from exposure to asbestos must be commenced within two years after the injured person knows that he or she has an asbestos-related disease, without regard to the ten-year statute of repose. Under this section,

> (d) This . . . [exception]. . . applies only to product liability actions against:
> (1) *persons who mined and sold* commercial asbestos; and
> (2) funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos related disease claims or asbestos related property damage claims.

Ind. Code § 34-20-3-2(d) (emphasis supplied).

The defendants contend this exception applies only to persons who satisfy both criteria -- persons who both mined *and* sold -- commercial asbestos. Black argues this section's exception to the statute of repose should be interpreted to allow suits against either

persons who mined commercial asbestos or persons who sold commercial asbestos.

We find that the construction urged by the defendants is inconsistent with other provisions of the product liability act and with our supreme court's precedent and would lead to an absurd result. Thus, we hold the exception applies to persons who mine commercial asbestos and to persons who sell, but do not mine, commercial asbestos. Therefore, summary judgment for the defendants on the ground that none of the defendants mined commercial asbestos was improper.

We note at the outset that in at least three prior decisions, panels of this court have indicated in dicta that the language of this statutory exception is unambiguous, *see Sears Roebuck and Co. v. Noppert*, 705 N.E.2d 1065, 1068 (Ind. Ct. App. 1999), and that the

exception applies only to entities that both mine and sell commercial asbestos. *Id.*; *Novicki v. Rapid-American Corp.*, 707 N.E.2d 322, 324 (Ind. Ct. App. 1999).[3]

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[3] As the dissent indicates, Judge McKinney took the same approach in *Spriggs v. Armstrong World Indus.*, No. IP91-651, 1999 U.S. Dist. LEXIS 19874 (S.D. Ind. May 7 1999). It is well established that decisions of the federal district courts are not binding on this court, *see, e.g.*, *Security Credit Acceptance Corp. v. State*, 144 Ind. App. 558, 575, 247 N.E.2d 825, 834 (1969), and we must decline to adopt Judge McKinney's analysis for the reasons explained below.

See also Holmes v. ACandS, Inc., 711 N.E.2d 1289 (Ind. Ct. App. 1999) (where on rehearing we discussed *Noppert* and *Novicki*.) In the case currently before us, however, we are presented for the first time [footnote omitted] with cogent argument and legal authority identifying the ambiguity of this section and directly addressing the question of its meaning.

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ROBB, J., concurred.

MATHIAS, J., filed a separate written opinion in which he dissented, in part, as follows:

> I agree with the majority's citation of the operative facts and its broad outline of the applicable standards of review. I must disagree, however, with the majority's rendering of the relevant statutory language, characterization of recent caselaw on point as dicta, and reliance on Covalt v. Carey Canada, Inc., 543 N.E.2d 382 (Ind. 1989), a case that predates the statutory language at issue herein.
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CASE CLIPS is published by the
Indiana Judicial Center
National City Center - South Tower, 115 West Washington Street, Suite 1075
Indianapolis, Indiana 46204-3417
Jane Seigel, Executive Director
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Thomas R. Hamill, Staff Attorney
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CASE CLIPS TRANSFER TABLE

August 3, 2001

This table lists recent grants of transfer by the Indiana Supreme Court for published decisions of the Court of Appeals. It includes Judicial Center summaries of the opinions of the Court of Appeals vacated by the transfers and of the Supreme Court's opinions on transfer.

A CASE CLIPS transfer information feature was suggested by the Justices of the Indiana Supreme Court in response to trial court requests for more accessible information about grants of transfer. The table is prepared with assistance from the Supreme Court Administrator's Office, which sends the Judicial Center a weekly list of transfer grants.

A grant of transfer vacates the opinion of the Court of Appeals: "[i]f transfer be granted, the judgment and opinion or memorandum decision of the Court of Appeals shall thereupon be vacated and held for naught, except as to any portion thereof which is expressly adopted and incorporated by reference by the Supreme Court, and further, except where summarily affirmed by the Supreme Court." Indiana Appellate Rule 11(B)(3).

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Owens Corning Fiberglass v. Cobb	714 N.E.2d 295 49A04-9801-CV-46	Defense should have received summary judgment as plaintiff showed only that he might have been exposed to its asbestos	01-19-00	
McCarthy v. State	726 N.E.2d 789 37A04-9903-CR-108	Reversible error in teacher's sexual misconduct prosecution to prevent his cross-examination of child's mother about her filing notice of tort claim against school and possible intent to sue defendant personally.	6-08-00	6-28-01. 37S04-0006-CR-359. Harmless error standard of review applies to denial of confrontation, and here error was harmless.
Zimmerman v. State	727 N.E.2d 714 77A01-9909-CV-318	Cases hold no appeal lies from a prison disciplinary action, but here inmate could bring a civil mandate action to compel DOC to comply with a clear statutory mandate.	8-15-00	Cases hold no appeal lies from a prison disciplinary action, but here inmate could bring a civil mandate action to compel DOC to comply with a clear statutory mandate.
Felsher v. City of Evansville	727 N.E.2d 783 82A04-9910-CV-455	University was entitled to bring claim for invasion of privacy; professor properly enjoined from appropriating "likenesses" of university and officials; professor's actions and behavior did not eliminate need for injunction; and injunction was not overbroad..	8-15-00	
Dow Chemical v. Ebling	723 N.E.2d 881 22A05-9812-CV-625	State law claims against pesticide manufacturer, with exception of negligent design, were preempted by federal FIFRA pesticide control act; pest control company provided a service and owed duty of care to apartment dwellers, precluding summary judgment.	8-15-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Sanchez v. State	732 N.E.2d 165 92A03-9908-CR-322	Instruction that jury could not consider voluntary intoxication evidence did not violate Indiana Constitution	9-05-00	749 N.E.2d 509, No. 92S03-0009-CR-518, 6-26-01. The statute providing that intoxication is not a defense to a criminal prosecution does not violate the Indiana Constitution.
South Gibson School Board v. Sollman	728 N.E.2d 909 26A01-9906-CV-222	Denying student credit for all course-work he performed in the semester in which he was expelled was arbitrary and capricious; summer school is not included within the period of expulsion which may be imposed for conduct occurring in the first semester	9-14-00	
Poynter v. State	733 N.E.2d 500 57A03-9911-CR-423	At both pre-trials Court advised non-indigent defendant he needed counsel for trial and defendant indicated he knew he had to retain lawyer but was working and had been tired; 2nd pretrial was continued to give more time to retain counsel; trial proceeded when defendant appeared without counsel; record had no clear advice of waiver or dangers of going pro se - conviction reversed.	10-19-00	6-27-01. 749-N.E.2d 1122, No. 57S03-0010-CR-595. Facts and circumstances of case presented on appeal do not establish a knowing and voluntary waiver of the right to counsel.
Moberly v. Day	730 N.E.2d 768 07A01-9906-CV-216	Fact issue as to whether son-in-law was employee or independent contractor precluded a summary judgment declaring no liability under respondeat superior theory; and Comparative Fault has abrogated fellow servant doctrine.	10-24-00	
Shambaugh and Koorsen v. Carlisle	730 N.E.2d 796 02A03-9908-CV-325	Elevator passenger who was injured when elevator stopped and reversed directions after receiving false fire alarm signal brought negligence action against contractors that installed electrical wiring and fire alarm system in building. Held: contractors did not have control of elevator at time of accident and thus could not be held liable under doctrine of res ipsa loquitur.		
S.T. v. State	733 N.E.2d 937 20A03-9912-JV-480	No ineffective assistance when (1) defense counsel failed to move to exclude two police witnesses due to state's failure to file witness list in compliance with local rule and (2) failed to show cause for defense failure to file its witness list under local rule with result that both defense witnesses were excluded on state's motion	10-24-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Tapia v. State	734 N.E.2d 307 45A03-9908-PC-304	Reverses refusal to allow PCR amendment sought 2 weeks prior to hearing or to allow withdrawal of petition without prejudice	11-17-00	
Tincher v. Davidson	731 N.E.2d 485 49A05-9912-CV-534	Affirms mistrial based on jury's failures to make comparative fault damage calculations correctly	11-22-00	
Brown v. Branch	733 N.E.2d 17 07A04-9907-CV-339	Oral promise to give house to girlfriend if she moved back not within the statute of frauds.	11-22-00	
New Castle Lodge v. St. Board of Tx. Comm.	733 N.E.2d 36 49T10-9701-TA-113	Fraternal organization which owned lodge building was entitled to partial property tax exemption	11-22-00	
Gallant Ins. Co. v. Isaac	732 N.E.2d 1262 49A02-0001-CV-56	Insurer 's agent had "inherent authority" to bind insurer, applying case holding corp. president had inherent authority to bind corp. to contract	11-22-00	
Reeder v. State	732 N.E.2d 1246 49A05-9909-CV-416	When filed, expert's affidavit sufficed to avoid summary judgment but affiant's death after the filing made his affidavit inadmissible and hence summary judgment properly granted.	1-11-01	
Holley v. Childress	730 N.E.2d 743 67A05-9905-JV-321	Facts did not suffice to overcome presumption non-custodial parent was fit so that temporary guardianship for deceased custodial parent's new spouse was error.	1-11-01	
Cannon v. Cannon	729 N.E.2d 1043 49A05-9908-CV-366	Affirms decision to deny maintenance for spouse with ailments but who generated income with garage sales	1-11-01	
Davidson v. State	735 N.E.2d 325 22A01-0004-PC-116	Ineffective assistance for counsel not to have demanded mandatory severance of charges of "same or similar character" when failure to do so resulted in court's having discretion to order consecutive sentences.	1-17-01	
Leshore v. State	739 N.E.2d 1075 02A03-0007-CR-234	(1) Writ of body attachment on which police detained defendant was invalid on its face for failure to include bail or escrow amount, and (2) defendant's flight from detention under the writ did not amount to escape.	1-29-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Rogers v. R.J. Reynolds Tobacco	731 N.E.2d 36 49A02-9808-CV-668	(1) trial court committed reversible error by making ex parte communication with deliberating jury, in which jury was advised that it could hold a press conference after its verdict was read, without giving notice to parties; (2) denial of plaintiff's motion for relief from judgment, which was based on public statements by director of one of manufacturers, was within court's discretion; (3) jury was properly instructed on doctrine of incurred risk; (4) evidentiary rulings were within court's discretion; and (5) leave to amend complaint was properly denied	2-09-01	4-18-01. 745 N.E.2d 793, No. 49S02-0102-CV-95. While trial count judge should have advised parties before responding to jury, the response was neutral and not misleading and length of ensuing deliberations indicate jury was unaffected, so that error was not reversible.
Mercantile Nat'l Bank v. First Builders	732 N.E.2d 1287 45A03-9904-CV-132	materialman's notice to owner of intent to hold personally liable for material furnished contractor, IC 32-8-3-9, sufficed even though it was filed after summary judgment had been requested but not yet entered on initial complaint for mechanic's lien foreclosure	2-09-01	
State Farm Fire & Casualty v. T.B.	728 N.E.2d 919 53A01-9908-CV-266	(1) insurer acted at its own peril in electing not to defend under reservation of rights or seek declaratory judgment that it had no duty to defend; (2) insurer was collaterally estopped from asserting defense of childcare exclusion that was addressed in consent judgment; (3) exception to child care exclusion applied in any event; and (4) insurer's liability was limited to $300,000 plus post-judgment interest on entire amount of judgment until payment of its limits.	2-09-01	
Merritt v. Evansville Vanderburgh School Corp	735 N.E.2d 269 82A01-912-CV-421	error to refuse to excuse for cause two venire persons employed by defendant even though they asserted they could nonetheless be impartial and attentive	2-09-01	
IDEM v. RLG, Inc	735 N.E.2d 290 27A02-9909-CV-646	the weight of authority requires some evidence of knowledge, action, or inaction by a corporate officer before personal liability for public health law violations may be imposed. Personal liability may not be imposed based solely upon a corporate officer's title.	2-09-01	
State v. Gerschoffer	738 N.E.2d 713 72A05-0003-CR0116	Sobriety checkpoint searches are prohibited by Indiana Constitution.	2-14-01	
Healthscript, Inc. v. State	724 N.E.2d 265, *rhrg.* 740 N.E.2d 56249A05-9908-CR-370	Medicare fraud crimes do not include violations of state administrative regulations.	2-14-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Vadas v. Vadas	728 N.E.2d 250 45A04-9901-CV-18	Husband's father, whom wife sought to join, was never served (wife gave husband's attorney motion to join father) but is held to have submitted to divorce court's jurisdiction by appearing as witness; since father was joined, does not reach dispute in cases whether property titled to third parties not joined may be in the marital estate.	3-01-01	
N.D.F. v. State	740 N.E.2d 574 49A02-0006-CR-383	Juvenile determinate sentencing statute was intended to incorporate adult habitual criminal offender sequential requirements for the two "prior unrelated delinquency adjudications"; thus finding of two prior adjudications, without finding or evidence of habitual offender-type sequence, was error	3-02-01	
Robertson v. State	740 N.E.2d 574 49A02-0006-CR-383	Hallway outside defendant's apartment was part of his "dwelling" for purposes of handgun license statute.	3-09-01	
Bradley v. City of New Castle	730 N.E.2d 771 33A01-9807-CV-281	Extent of changes to plan made in proceeding for remonstrance to annexation violated annexation fiscal plan requirement.	4-06-01	
King v. Northeast Security	732 N.E.2d 824 49A02-9907-CV-498	School had common law duty to protect student from criminal violence in its parking lot; security company with parking lot contract not liable to student under third party beneficiary rationale.	4-06-01	
State v. Hammond	737 N.E.2d 425 41A04-0003-PC-126	Amendment of driving while suspended statute to require "validly" suspended license is properly applied to offense committed prior to amendment, which made "ameliorative" change to substantive crime intended to avoid supreme court's construction of statute as in effect of time of offense.	4-06-01	
McCann v. State	742 N.E.2d 998 49A05-0002-CR-43	Photo array not improper; no prosecutorial misconduct; no error in attempted rape instruction; no error in sentencing refusal to rely on pregnancy of victim as not shown defendant knew of pregnancy.	4-12-01	
Dewitt v. State	739 N.E.2d 189	Trial court's failure to advise a defendant of his *Boykin* rights (trial by jury, confrontation, and privilege against self-incrimination) requires vacation of his guilty plea	4-26-01	
Buchanan v. State	742 N.E.2d 1018 18A04-0004-CR-167	Admission of pornographic material picturing children taken from child-molesting defendant's home was error under Ev. Rule 404(b).		

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
McCary v. State	739 N.E.2d 193 49A02-0004-PC-226	Failure to interview policeman/probable-cause-affiant, when interview would have produced exculpatory evidence, was ineffective assistance of trial. Counsel on direct appeal was ineffective for noting issue but failing to make record of it via p.c. proceeding while raising ineffective assistance in other respects. Post-conviction court erred in holding res judicata applied under *Woods v. State* holding handed down after direct appeal..	5-10-01	
Equicor Development, Inc. v. Westfield-Washington Township Plan Comm.	732 N.E.2d 215 No. 29A02-9909-CV-661	Plan Commission denial of subdivision approval was arbitrary and capricious, notwithstanding it was supported by evidence, due to Commission's prior approvals of numerous subdivision having same defect.	5-10-01	
Martin v. State	744 N.E.2d 574 No 45A05-0009-PC-379	Finds ineffective assistance of appellate counsel for waiving issue of supplemental instruction given during deliberations on accomplice liability.	6-14-01	
Segura v. State	729 N.E.2d594 No. 10A01-9906-PC-218	Notes possible effect of Williams v. Taylor, 529 U.S. 362 (2000) on Indiana cases on ineffective assistance of counsel for failure to advise correctly of penal consequences of guilty plea, while affirming conviction.	6-05-01	6-26-01. No. 10S01-0009-PC-515. Assesses effect of federal decisions on Indiana caselaw and concludes "in the case of claims related to a defense or failure to mitigate a penalty, it must be shown that there is a reasonable probability that a more favorable result would have obtained in a competently run trial. However, for claims relating to penal consequences, a petitioner must establish, by objective facts, circumstances that support the conclusion that counsel's errors in advice as to penal consequences were material to the decision to plead."
Catt v. Board of Comm'rs of Knox County	736 N.E.2d 341 (Ind. Ct. App. 2000) No. 42A01-9911-CV-396	County had duty of reasonable care to public to keep road in safe condition, and County's knowledge of repeated washs-outs of culvert and its continued failure to repair meant that wash-out due to rain was not a "temporary condition" giving County immunity.	6-14-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Ind. Dep't of Environmental Mgt. v. Bourbon Mini Mart, Inc.	741 N.E.2d 361 No. 50A03-9912-CV-476	(1) third-party plaintiffs were collaterally estopped from pursuing indemnity claim against automobile dealership; (2) third-party plaintiffs were collaterally estopped from pursuing indemnity claim against gasoline supplier pursuant to pre-amended version of state Underground Storage Tank (UST) laws; (3) amendment to state UST laws, which eliminated requirement that party seeking contribution toward remediation be faultless in causing leak, did not apply retroactively so as to allow contribution for response costs that were incurred before its effective date; and (4) third-party plaintiffs' action against gasoline supplier to recover ongoing remediation costs was not time barred.	6-14-01	
In re Ordinance No. X-03-96	744 N.E.2d 996 02A05-0002-CV-77	Annexation fiscal plan must have noncapital services estimates from a year after annexation and capital improvement estimates from three years after annexation.	7-18-01	
Corr v. Schultz	743 N.E.2d 1194 71A03-0006-CV-216	Construes uninsured motorist statutes to require comparison of what negligent party's insurer actually pays out with amount of insured's uninsured coverage; rejects prior Court of Appeals decision, *Sanders*, 644 N.E.2d 884, that uninsured statutes use comparison of negligent party's liability limits to uninsured coverage limit ("policy limits to policy limits" comparison); notes that not-for-publication decision from same accident, *Corr v. American Family Insurance*, used *Sanders* to hold that the correct analysis was to "compare the $600,000 per accident bodily injury liability limit under the two policies covering Balderas [negligent driver] to the $600,000 per accident underinsured motor vehicle limit of the policies under which Janel [Corr] was an insured; transfer also granted 7-18-01 in this unreported *Corr* case.	7-18-01	
Buckalew v. Buckalew	744 N.E.2d 504 34A05-0004-CV-174	Interprets local rule "no final hearing may be scheduled and no decree of dissolution of marriage or legal separation shall be entered unless and until the prescribed [financial] disclosure form is filed" to be "jurisdictional" so that trial court which made the rule had no authority to conduct a hearing or enter a decree without the required disclosure forms or a waiver by both parties.	7-18-01	

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Friedline v. Shelby Insurance Co.	739 N.E.2d 178 71A03-0004-CV-132	Applies Indiana Supreme Court cases finding ambiguity in liability policies' exclusions for "sudden and accidental" and "pollutant" as applied to gasoline to hold that "pollutants" exclusion as applied to carpet installation substances was ambiguous and that insurance company's refusal to defend, made with knowledge of these Supreme Court ambiguity decisions, was in bad faith.	7-18-01	
St. Vincent Hospital v. Steele	742 N.E.2d 1029 34A02-0005-CV-294	IC 22-2-5-2 Wage Payment Statute requires not only payment of wages at the usual frequency (e.g., each week, etc.) but also in the correct amount, so Hospital which relied on federal legislation and federal regulatory interpretation for its refusal to pay physician contract compensation amount was liable for attorney fees and liquidated damages under Statute.	7-18-01	
Smith v. State	748 N.E.2d 895 29A02-00100PC-640	Error to find PCR laches when petition was filed within 27 days of sentencing and all ensuing delays due to Public Defender; guilty plea to six theft counts, for stealing a single checkbook containing the six checks, was unintelligent due to counsel's failure to advise of "single larceny" rule; the theft of the checkbook and ensuing deposits of six forged checks at six different branches of the same bank in the same county "within a matter of hours" were a "single episode of criminal conduct" subject to limits on consecutive sentencing and counsel's failure to discuss the single episode limit also rendered plea unintelligent.	7-19-01	